

1 attention?

2 A I think I knew that before. This gives me
3 address, telephone number and the like.

4 Q And how did you come to know before?

5 A I think I asked him who was going to be the FCC
6 counsel.

7 Q Had you spoken to Alan Campbell by this time?

8 A I don't know. We could go back to my bill.

9 Q On the second page of Mass Media Exhibit 18 after
10 the date of 10-20-93, do you see a reference there to
11 Washington D.C. counsel?

12 A Yes. That -- my memory is that that was a written
13 comment sent by Alan Campbell with regard to the documents,
14 and I believe I spoke to him.

15 Q At that time did you have an understanding as to
16 who it was Mr. Campbell was representing?

17 A At that time?

18 Q Yes, sir.

19 A I thought he was going to represent the new
20 entity.

21 Q And what is the basis for that?

22 A Well, he was making comments on documents.

23 Q I'm not sure if I asked you this directly with
24 respect to Mass Media Exhibit 33. I take it you did receive
25 this?

1 A I believe I did, yes.

2 Q Do you recall what, if anything, you did as a
3 consequence?

4 A With this?

5 Q Yes, sir.

6 A I think I put it in my file. I usually make up a
7 distribution sheet and put Alan Campbell on the distribution
8 sheet.

9 MR. SHOOK: Your Honor, the Bureau offers Exhibit
10 33, Mass Media Exhibit 33.

11 JUDGE CHACHKIN: Any objection?

12 MR. WERNER: No, Your Honor.

13 JUDGE CHACHKIN: The exhibit is received.

14 (The document referred to,
15 having been previously marked
16 for identification as MMB
17 Exhibit No. 33, was received
18 into evidence.)

19 JUDGE CHACHKIN: We'll take a 10-minute break.

20 (Whereupon, a recess was taken.)

21 JUDGE CHACHKIN: Back on the record.

22 BY MR. SHOOK:

23 Q Mr. Brown, could you please turn to Mass Media
24 Exhibit 52? It's a three-page document; the first page of
25 which is a letter bearing the date of March 15, 1994.

1 Do you have that?

2 A I do.

3 Q And were you the author of this letter?

4 A Yes.

5 Q And would it be consistent with your recollection
6 that you sent a copy of this letter to both Mr. Hicks and to
7 Mr. Dille?

8 A Yes.

9 MR. SHOOK: Your Honor, the Bureau would offer
10 Exhibit 52.

11 JUDGE CHACHKIN: Any objection?

12 MR. WERNER: No. Your Honor .

13 JUDGE CHACHKIN: Bureau Exhibit 52 is received.

14 (The document referred to,
15 having been previously marked
16 for identification as MMB
17 Exhibit No. 52, was received
18 into evidence.

19 BY MR. SHOOK:

20 Q Mr. Brown, could you please turn to Mass Media
21 Exhibit 53?

22 Do you have before you a two-page letter bearing
23 the date of March 14, 1994?

24 A Yes.

25 Q Are you the author of this letter?

1 A Yes.

2 Q Now, with respect to the first page, would you
3 read to yourself the "as discussed" paragraph? I guess,
4 it's a one-sentence paragraph.

5 MR. WERNER: For clarification, Jim, there are two
6 "as discussed" paragraphs. You mean the first one?

7 MR. SHOOK: The second one. Excuse me.

8 "As we have discussed, you do not desire," et
9 cetera.

10 THE WITNESS: Yes.

11 BY MR. SHOOK:

12 Q Had you previously asked Mr. Zaragoza to provide
13 some kind of written opinion?

14 A Yes.

15 Q Approximately when did you ask?

16 A I don't recall.

17 Q It was some time after the January 1994 board
18 meeting?

19 A Yes.

20 MR. SHOOK: Your Honor the Bureau offer Exhibit --
21 Mass Media Exhibit 53?

22 JUDGE CHACHKIN: Any objection?

23 MR. WERNER: No, Your Honor.

24 JUDGE CHACHKIN: The exhibit is received.

25 (The document referred to,

1 having been previously marked
2 for identification as MMB
3 Exhibit No. 53, was received
4 into evidence.)

5 BY MR. SHOOK:

6 Q Would you please turn to Mass Media 55?

7 Are you the author of this letter?

8 A Yes.

9 Q Would it be consistent with your recollection that
10 you sent this to Mr. Zaragoza and copies to Mr. Hicks and
11 Mr. Sackley?

12 A Yes.

13 MR. SHOOK: Your Honor, the Bureau offers Mass
14 Media Exhibit 55.

15 JUDGE CHACHKIN: Any objection?

16 MR. WERNER: No objection.

17 JUDGE CHACHKIN: The exhibit is received.

18 (The document referred to,
19 having been previously marked
20 for identification as MMB
21 Exhibit No. 55, was received
22 into evidence.)

23 BY MR. SHOOK:

24 Q Mr. Brown, could you please turn to Mass Media
25 Exhibit 56?

1 Do you have before you a six-page document?

2 A Yes.

3 Q Are you the author of the letter that appears on
4 the first page?

5 A Yes.

6 Q Is it your recollection that you enclosed a letter
7 and agreement with the Hungerford Radio Revenue Report that
8 was sent to you by Kim Houdulin to Mr. Hicks, with a copy to
9 Mr. Dille?

10 A Yes.

11 Q Now, why is it that you sent a copy of this to Mr.
12 Dille?

13 A For the same reason that I had spoken to him on
14 other occasions; as a representative of his children.

15 MR. SHOOK: Your Honor, the Bureau offers Mass
16 Media Exhibit 56.

17 JUDGE CHACKIN: Any objection.

18 MR. WERNER: No, Your Honor.

19 MR. JOHNSON: No, Your Honor.

20 JUDGE CHACKIN: The exhibit is received.

21 (The document referred to,
22 having been previously marked
23 for identification as MMB
24 Exhibit No. 56, was received
25 into evidence.)

1 BY MR. SHOOK:

2 Q Mr. Brown, could you please turn to Mass Media
3 Exhibit 60?

4 Do you have before you a one-page document bearing
5 the date March 29, 1994?

6 A Yes.

7 Q Are you the author of the letter?

8 A Yes.

9 Q Would it be consistent with your recollection that
10 you sent a copy of this to Mr. Campbell?

11 A Well, I sent the letter to Mr. Campbell.

12 MR. SHOOK: Your Honor, the Bureau offer Mass
13 Media Exhibit 60.

14 JUDGE CHACHKIN: Any objection?

15 MR. WERNER: No objection.

16 JUDGE CHACHKIN: The exhibit is received?

17 (The document referred to,
18 having been previously marked
19 for identification as MMB
20 Exhibit NO. 60, was received
21 into evidence.)

22 BY MR. SHOOK:

23 Q Mr. Brown, would you please turn to Mass Media
24 Exhibit 66?

25 Do you recognize the author of this document?

Heritage Reporting Corporation
(202) 628-4888

1 A Yes.

2 Q Mr. Stankewicz works in your office, correct?

3 A That's correct.

4 Q And he was working with you on this transaction
5 involving WRBR?

6 A Yes.

7 Q Is it consistent with your recollection that this
8 letter was sent by Mr. Stankewicz?

9 A I believe it was.

10 MR. SHOOK: Your Honor, the Bureau offers Mass
11 Media Exhibit 66.

12 JUDGE CHACHKIN: Any objection?

13 MR. WERNER: No objection.

14 JUDGE CHACHKIN: The exhibit is received.

15 (The document referred to,
16 having been previously marked
17 for identification as MMB
18 Exhibit No. 66, was received
19 into evidence.)

20 MR. SHOOK: Your Honor, a moment.

21 THE WITNESS: There was only -- I see there are
22 nine enclosures, attachments. I only have one attached to
23 my letter.

24 MR. SHOOK: Right. What we have is just a three-
25 page document.

1 THE WITNESS: Yes.

2 JUDGE CHACHKIN: And we don't have all the
3 enclosures.

4 THE WITNESS: Okay.

5 JUDGE CHACHKIN: Your Honor, if I may have a
6 moment to check my notes.

7 JUDGE CHACHKIN: Yes.

8 (Pause.)

9 BY MR. SHOOK:

10 Q Mr. Brown, could you please turn to Mass Media
11 Exhibit No. 80?

12 It's in the third volume of exhibits. It could
13 well be either on the table next to Mr. Hall, who is
14 graciously going to give you the volume.

15 Do you have before you a letter dated May 2, 1994?

16 A Yes.

17 Q And you're the author of that letter?

18 A Yes.

19 Q And it would be consistent with your recollection
20 that you set this letter, plus the enclosures that are
21 referenced, which are not attached?

22 A Yeah, and I don't know what those are.

23 Q You don't know what those are.

24 A It's says "Copies of letters."

25 Q Well, perhaps I can help you with that. Could you

1 please turn to Mass Media Exhibit 81?

2 A I have it.

3 Q And also, Mass Media Exhibit 82.

4 A I have it.

5 Q Do you -- do the letters that appear in Mass Media
6 Exhibit 81 and 82 refresh your recollection as to whether
7 they are the letters that were referenced in Mass Media
8 Exhibit 80?

9 A They're dated the same day, and I believe they
10 are.

11 MR. SHOOK: Your Honor, the Bureau offers Mass
12 Media Exhibit 80, which I don't think we had offered
13 previously?

14 MR. JOHNSON: No objection.

15 JUDGE CHACHKIN: Any objection?

16 MR. WERNER: No, Your Honor.

17 JUDGE CHACHKIN: The exhibit is received.

18 (The document referred to,
19 having been previously marked
20 for identification as MMB
21 Exhibit No. 80, was received
22 into evidence.)

23 MR. SHOOK: Your Honor, the Bureau has no further
24 questions.

25 JUDGE CHACHKIN: Let me just ask you one question.

1 The Bureau asked you about Bureau Exhibit 23, page 17.

2 THE WITNESS: Your Honor, I don't seem to --

3 (Pause.)

4 THE WITNESS: Page 17, Your Honor?

5 JUDGE CHACHKIN: Yes.

6 And under "Hicks Private Transaction," according
7 to the minutes of the board of directors meeting of January
8 28, 1994, and there is a sentence there which reads, "The
9 board also discussed the ramifications of WRBR having FCC
10 violations, possible need for indemnification from Dave so
11 advised by legal counsel, and clarification that this
12 activity was not to any way interfere with Dave's
13 responsibilities of Crystal Radio."

14 Now, with respect to the what was raised dealing
15 with ramifications of WRBR having FCC violations, do you
16 recall what was discussed in that connection?

17 THE WITNESS: Yes, I do.

18 JUDGE CHACHKIN: What was discussed?

19 THE WITNESS: Mr. Sackley wanted an opinion that
20 Alan Campbell ultimately gave with regard to whether or not
21 FCC violations at the South Bend station could endanger the
22 Crystal Radio licenses.

23 JUDGE CHACHKIN: Was there anything said about in
24 what way the license could be in danger?

25 THE WITNESS: No.

1 JUDGE CHACHKIN: There was no discussion
2 concerning the bona fides of this proposed transaction
3 involving Mr. Hicks' acquisition of the South Bend station?

4 THE WITNESS: No. As I understood it, the
5 question was could certain activities take place in the
6 radio station in South Bend which activities could affect
7 the license of Crystal or the three stations it owned.

8 JUDGE CHACHKIN: Did Mr. Sackley indicate what his
9 concern was?

10 THE WITNESS: His -- as I understand it, his
11 concern was whether or not the activities of an operator of
12 a license in South Bend could do something so that the
13 license of Crystal Radio would be in danger.

14 JUDGE CHACHKIN: And Mr. Sackley didn't indicate
15 what his specific concern or what activity it was that he
16 was concerned about?

17 THE WITNESS: Well, no, he did not. He was giving
18 a -- the question was whether or not any -- an operator of a
19 radio station at one station could do something at that
20 station which would endanger the other station's license.

21 JUDGE CHACHKIN: What stations are we talking
22 about here?

23 THE WITNESS: We're talking about the South Bend
24 station and the Crystal Radio licenses.

25 JUDGE CHACHKIN: And there was no discussion about

1 what Mr. Sackley was concerned about, and Mr. Sackley didn't
2 bring up the subject as to what he was concerned about?

3 THE WITNESS: Well, my understanding he was
4 concerned, for example, if a licensee of one station
5 committed a crime, could that be attributed some way to
6 another station that he had an interest in, so that wouldn't
7 danger his license.

8 JUDGE CHACHKIN: That wouldn't danger the Crystal
9 license?

10 THE WITNESS: Yes, because Mr. Hicks was a 30 some
11 percent owner of the Crystal Radio Group.

12 JUDGE CHACHKIN: But Mr. Sackley didn't bring up
13 why he was bringing up the subject that he felt required a
14 letter from a lawyer?

15 THE WITNESS: That's why he wanted it. I think I
16 tried to describe it to you. He was concerned as to whether
17 or not an activity of a licensee at one station could be
18 attributed to another station where that person had an
19 ownership interest.

20 JUDGE CHACHKIN: I mean, this -- but Mr. Sackley
21 didn't express what specific concerns he had concerning Mr.
22 Hicks' acquisition of the South Bend station that he felt
23 could endanger the Crystal station?

24 THE WITNESS: No. As I understand it, it wasn't
25 anything specific. It was a hypothetical question: Could,

1 could the activities of an operator at one station affect
2 his ownership interest and activities at another station.

3 JUDGE CHACHKIN: Now, it says here that he
4 explained the transaction recently filed with the FCC
5 involving his 51 percent ownership of Hicks Broadcasting.

6 What did Mr. Hicks explain? It's the first
7 sentence under "Hicks Private Transaction."

8 THE WITNESS: Well, I believe he described the
9 transaction; that is, the terms and conditions, purchase
10 price, how it worked.

11 JUDGE CHACHKIN: Did he say anything how about how
12 it would affect his continuing -- play a role with Crystal?

13 THE WITNESS: Yes, I believe he did.

14 JUDGE CHACHKIN: And what did he say in that
15 regard?

16 THE WITNESS: There was a concern about the time
17 commitment expressed, and he said it wouldn't.

18 JUDGE CHACHKIN: Did he say why it wouldn't?

19 THE WITNESS: Well, my memory is that he said that
20 it would be a limited time of supervising some two, three,
21 four people in South Bend. There would be a general manager
22 there, and he'd have to be there some, but not very often.

23 JUDGE CHACHKIN: Now, it says, "The board also
24 discussed the ramifications of WRBR having FCC violations."

25 Was there any discussion of what the nature of

1 these FCC violations might be?

2 THE WITNESS: No, this is what I -- as I
3 understand it, this is what I'm trying to describe to you.
4 It's a hypothetical question.

5 JUDGE CHACHKIN: And it says here, "...and
6 clarification that this activity was not to in any way
7 interfere with Dave's responsibilities of Crystal Radio."

8 What does that mean?

9 THE WITNESS: Well, I think that's referring to
10 the time commitment.

11 JUDGE CHACHKIN: All right, anything further of
12 this witness? Any redirect?

13 MR. CRISPIN: Well, Your Honor, I have some
14 questions.

15 JUDGE CHACHKIN: You have? I'm sorry, Mr.
16 Crispin.

17 CROSS-EXAMINATION

18 BY MR. CRISPIN:

19 Q Mr. Brown, I have just a couple of questions about
20 exit strategy, which is probably a topic pretty much on your
21 mind right now as it approaches 4:00.

22 (Laughter.)

23 Now, my question to you, Mr. Brown, is as follows:
24 You testified at various times yesterday afternoon, this
25 morning and early in the afternoon about this whole concern

1 you had for exit strategy for David Hicks.

2 Do you recall that?

3 A Yes.

4 Q And do you recall your testimony also today about
5 your note that you made in the conversation with Mr. Hicks
6 about within a respectable amount of time?

7 A Yes.

8 Q Now, do you recall in your testimony again talking
9 about building the station as an example within a
10 respectable amount of time?

11 A I don't recall using the word "building." No, I
12 think the station was already up and running. I think I --

13 Q Oh, getting it up and running?

14 A Getting it up and running.

15 Q Okay.

16 A Financially, financially profitable.

17 Q Okay. Now, if we turn then -- just trying to put
18 those thoughts in your mind so we're both talking about the
19 same thing. If you would turn me to Mass Media Bureau
20 Exhibit 61, I have just a handful of questions.

21 This is your handwritten note that Eric Brown --
22 your handwritten note of 3-30-94 to Bob.

23 A Sixty-one?

24 Q Yes, sir.

25 A Oh, yes.

1 I'm Eric Brown.

2 Q Yes, I'm -- I'm with you there.

3 Now, have yogi got that in front of you, Mr.

4 Brown?

5 A I do.

6 Q Now, as I understood it, this is your first effort
7 to fashion that exit strategy that you were concerned about,
8 correct?

9 A Yes.

10 Q And right out of the box what you make any
11 recommendation one day before the closing is that that exit
12 strategy be delayed for three years?

13 A That's correct.

14 Q Now, explain that to me.

15 A Well, we've got about 24 hours to deal with this.
16 The matter is going to be closed, and I wanted to put forth
17 something that was reasonable, would be accepted so we could
18 get this matter accepted quickly. So I came up with the
19 three years.

20 Q Well, but if I look at the rest of the deal, as I
21 understand it these arrangements between the members, that
22 aside from this put right Mr. Hicks wasn't able to sell to
23 any third party his interest in Hicks or any portion of it
24 for a period, a similar period of three years, correct?

25 A In this deal?

1 Q In this deal.

2 A I don't recall that.

3 Q Well, I mean, if we look at Mass Media Bureau
4 Exhibit 66 -- 65, which I concede is a draft. It appears
5 to be one of these -- no, it's a document dated March 31,
6 1994.

7 Do you have that in front of you?

8 A I'm looking at it.

9 Q Do you see 7.4(c), "David Hicks agrees he will not
10 sell or offer to sell his interest in the company for the
11 first three years of the agreement"?

12 A Yes.

13 Q What I don't understand is, you tell me that
14 you're concerned about exit strategy. You talk in terms
15 about a respectable period of time, and yet there really is
16 not -- there is no immediate exit strategy for David Hicks
17 in this -- in this deal.

18 A No, there is not. Not for three years.

19 Q So what we have is an unconsummated concern.

20 A Well, no, it's not unconsummated. We have an exit
21 strategy after three years. We don't have for the first
22 three years.

23 Q And is it a true fact, Mr. Brown, that this
24 handwritten note that you sent or that you authored on the
25 30th of March, which again would be Mass Media Bureau

1 Exhibit 61, did there follow a discussion with someone
2 representing the Hicks' children where they insisted that
3 there be no exit strategy for Mr. Hicks?

4 A No.

5 Q I'm sorry. The Dille children. Let me restate
6 that question.

7 Did Mass Media Bureau Exhibit 61, did that follow
8 a discussion you had with anyone representing the Dille
9 children whereby you were informed that there would be no
10 exit strategy for Mr. Hicks for least three years?

11 A I don't know whether I had a conversation with the
12 Barnes & Thornburg firm, whether my partner, Steve
13 Stankewicz, might have had a conversation. I don't know.

14 Q So --

15 A I see here that I had have not talked it over with
16 Dave Hicks.

17 Q Right.

18 A The three years.

19 Q So these words that we have here on Mass Media
20 Bureau Exhibit 61, I suggest Hicks have no right to sell for
21 three years, in fact, may -- we may fairly read to suggest
22 that that is something that was told you as opposed to
23 something you suggested?

24 A No. No. No, I think I suggested it.

25 Q Okay. So your testimony is, and I meant to be

1 sure, is that no question about it you were concerned about
2 an exit strategy, and your first suggestion to implement an
3 exit strategy was to suggest no exit strategy for three
4 years, correct?

5 A Suggested that he could have a put for three
6 years.

7 Q And according to the rest of the deal, there would
8 be no exit strategy for three years, correct?

9 A Correct. Not usual for a brand new venture.

10 Q Well, what about --

11 A And I had 24 hours to try to get something
12 reasonable put together.

13 Q What about a small FM station that operated
14 independently, doesn't look to have a lot of value, if I
15 might quote your earlier testimony?

16 A What about it?

17 Q Well, I mean, isn't that the kind of deal you
18 might want to get out of a little earlier?

19 A Might want to, but you probably can't.

20 Q Did you try?

21 A No.

22 MR. CRISPIN: Okay, that's all I want to know.
23 Thank you. I have no more questions for the witness, Your
24 Honor.

25 JUDGE CHACHKIN: Any further cross?

1 MR. JOHNSON: I just have a couple of questions,
2 Your Honor.

3 CROSS-EXAMINATION

4 BY MR. JOHNSON:

5 Q Let me start, Mr. Brown, to follow up on Mr.
6 Crispin's point, which I think is a good one.

7 Could you look at Mass Media Bureau Exhibit No.
8 61, which is your handwritten note which Mr. Crispin just
9 talked to you about?

10 And in your exchange with Mr. Crispin just now
11 we're established that both in your proposal and in the
12 final transaction Mr. Hicks couldn't dispose of his interest
13 either through sales to third parties or by putting it to
14 the Dille children for the first three years of operation;
15 is that correct?

16 A That's correct.

17 Q In making that proposal, whether you made it
18 whether you simply responded to it, did you give any
19 consideration -- by the way, who was the majority owner of
20 Hicks Broadcasting of Indiana?

21 A Dave Hicks.

22 Q Did you give any consideration to whether or not
23 an earlier exit by the majority owner would have been
24 acceptable to the minority owners?

25 A Well, I'm working in a 24-hour period, but I think

1 that it would have been unreasonable to think that the
2 minority owners would have accepted such a put.

3 Q Can you tell us why?

4 A Well, we have a new venture here that certainly
5 doesn't have a lot of funds. We've just negotiated a fairly
6 unusual seller note in order to give the station time to get
7 on its feet, so that it would be harsh to think that
8 somebody could require the minority owners to buy them out
9 in a short period of time.

10 Q Let me ask you just a couple of other questions.
11 I'm finished with this exhibit for the moment.

12 In the beginning of Mr. Shook's examination he
13 asked you a series of questions regarding whether or not
14 you, or to your knowledge, anyone else prepared detailed
15 financial budgets for Radio Station WRBR.

16 Do you remember those questions?

17 A Yes, I do.

18 Q I think you testified that, to your knowledge, no
19 one did; is that correct?

20 A As far as I know, yes.

21 Q Is it possible that someone did but you don't know
22 about it?

23 A I don't know about it. It's possible somebody
24 did.

25 Q And then Mr. Shook asked you whether in other

1 transactions in which you had represented Mr. Hicks, such
2 detailed financial budgets had been prepared.

3 Do you remember that testimony?

4 A Yes.

5 Q And I think you told Mr. Shook that in some of
6 those transactions budgets had been prepared; do you
7 remember that?

8 A I do.

9 Q Okay. Here's what I want to know.

10 Who was financing the other transactions in which
11 the detailed budgets that you described were prepared?

12 A Well, in the first transaction, we had a bank in
13 Boston and a venture capital firm. So we had two lenders.

14 Q Now, let me just stop you on that point.

15 A Okay.

16 Q Has it been your experience that the lenders
17 sometimes require the submission of a detailed financial
18 proposal?

19 A On a leveraged buyout like that, they always
20 require a financial plan.

21 Q So let me come forward now to the WRBR
22 transaction. Who was financing that transaction?

23 A The seller.

24 Q Did the seller in that transaction require the
25 submission of detailed financial budget?

1 A In the Booth transaction?

2 Q Yes.

3 A No.

4 Q I just want to spend my last minute or two getting
5 in my own mind clarity with respect to a couple of dates,
6 and in anticipation of that maybe I could ask you in advance
7 to open the exhibit binders to Mass Media Bureau Exhibit
8 No. -- I'm sorry, I misspoke -- Pathfinder Exhibit No. 66
9 and also to Mass Media Bureau Exhibit No. 58.

10 MR. JOHNSON: Your Honor, since I'm going to talk
11 almost exclusively about dates, would you object if I wrote
12 those down on the pad as we discuss it? I think that would
13 help me phrase the questions.

14 JUDGE CHACKIN: Go ahead.

15 BY MR. JOHNSON:

16 Q Now, hold those for just a second, Mr. Brown.

17 You testified, in response to Mr. Shook's
18 questions, about a series of conversations you had with
19 either or both of Mr. Dille and Mr. Hicks in September of
20 1993.

21 Do you recall that testimony?

22 A I do.

23 Q And my recollection is, and correct me if I'm
24 wrong, that you had a meeting with Mr. Hicks on September
25 20th that you recall, right?

1 A Correct.

2 Q And that you had a telephone conversation with Mr.
3 Dille on September 21st, and you made notes of that
4 conversation?

5 A Correct.

6 Q And did you also meet with both Mr. Dille and Mr.
7 Hicks on September 22nd?

8 A Yes.

9 Q Now, I gather from your testimony that you
10 learned, at least at that time, that Mr. Dille had an
11 interest or a hope that his children might one day have some
12 option or other right to purchase Mr. Hicks' interest.

13 Is that a fair statement?

14 A That is.

15 Q So you've known that, you've known that he wanted
16 something like that from at least as early as September of
17 1993; correct?

18 A Correct.

19 Q Now, let me just ask you and just be as clear as
20 you can be: In that meeting on September 22nd of 1993, when
21 Mr. Dille made that proposal or posited that concept or
22 however you want to put it, that his children might one day
23 have an option, did either you or Mr. Hicks in your presence
24 manifest any agreement to that proposal?

25 A No.

1 Q Let me write that day down because I want to keep
2 it in reference. This is September 20th of '93; is that
3 correct?

4 A That was the first --

5 Q You're correct. I wrote the first thing down and
6 got it wrong.

7 September 22nd, September 22, 1993, right?

8 A Right.

9 Q At any time prior to that time had either you or
10 Mr. Hicks in your presence manifest to Mr. Dille any
11 agreement to his hope that his children might one day obtain
12 an option?

13 A No.

14 Q So is it fair to state that as of September 22,
15 1993, at least as far as you know, there was no agreement or
16 understanding between Mr. Hicks and Mr. Dille that his
17 children could have an option to purchase the statement?

18 A Fair statement.

19 Q Now, tell us as best you can recall when this
20 topic next came up.

21 A Well, I don't think it came up until February of
22 1994, when we were talking about forming the purchasing
23 entity.

24 Q Okay. Now, could I ask you to refer to what's
25 been previously identified and admitted as Mass Media Bureau

1 Exhibit No. 66?

2 MR. JOHNSON: And this, I believe, Your Honor, is
3 the -- I hope I've got this right. It's the --

4 MR. WERNER: Pathfinder 66.

5 MR. JOHNSON: What did I say?

6 MR. WERNER: Mass Media Bureau.

7 MR. JOHNSON: At least you're listening.

8 BY MR. JOHNSON:

9 Q It's Pathfinder Exhibit No. 66.

10 A You asked me the question is this the second
11 draft?

12 Q Well, I'm representing to you that that's my hope.
13 That's what I mean to --

14 A It is because the first draft did not have these
15 provision, the 7.4(b) call provision.

16 Q Okay. So in response to my question of when this
17 topic that we've been discussing next came up, is it fair to
18 say that it next came up in connection with that second
19 draft of the agreement?

20 A Yes.

21 Q Do you have any recollection as you sit here today
22 of when you received that draft?

23 A Well, I know it's in March.

24 Q Let me ask you. I don't mean to test your memory.
25 Let me ask you to take a look at Mass Media Bureau Exhibit

1 No. 58, which I think you testified about.

2 A Fifty-eight.

3 Q Mass Media Bureau.

4 A Oh. I'd think I'd get on to this.

5 Okay.

6 Q Okay. Does that in any way -- and what is that
7 document for the record, Mr. Brown?

8 A That's a letter from Robert Watson to me dated
9 March 25, which says "Attached is the revised operating
10 agreement."

11 Q And is that the revised operating agreement that's
12 reflected Pathfinder Exhibit No. 66?

13 A I believe it is.

14 Q Is that the first time you had seen that operating
15 agreement?

16 A Yes.

17 Q What is the date of that letter from Mr. Watson?

18 A March 25, 1994.

19 Q Okay. So just to help me with the dates here, am
20 I correct that the next time you're aware that this topic
21 was brought at least to your attention was on or about March
22 25, 1994?

23 A Well, yes.

24 Q Now --

25 A You said brought to my attention. I was looking

1 for it, but this is the first time I'd seen it.

2 Q And the reason I picked that date is that I think
3 you testified earlier just what you said, that this is the
4 first time that it had come back to you in a way that you
5 could see the idea. But here's my question and here's why
6 I've done it that way.

7 You've told us on September 22, 1993, that based
8 on everything you knew there was no agreement or
9 understanding between Mr. Dille or Mr. Hicks relating to an
10 option for Mr. Dille's children.

11 Am I right about that?

12 A Yes.

13 Q Okay. And you've also just told us that the next
14 time you yourself focused on it was on March 25, 1994,
15 thereabout, correct?

16 A Correct.

17 Q To the best of your knowledge, did anything at all
18 happen in connection with providing an option for Mr.
19 Dille's children between September 22, 1993 and March 25,
20 1994?

21 A To the best of my knowledge, no.

22 MR. JOHNSON: Thank you, Mr. Brown. I don't have
23 any further questions, Your Honor.

24 JUDGE CHACHKIN: So your recollection there were
25 no discussions of any kind on this subject during that

1 period of time?

2 THE WITNESS: That's my recollection. Yes.

3 JUDGE CHACHKIN: Do you have a question.

4 FURTHER CROSS-EXAMINATION

5 BY MR. SHOOK:

6 Q Only to the extent, Your Honor, that did I hear
7 you say you were looking for it?

8 A Well, I was looking for it in the first operating
9 agreement, and it wasn't there.

10 Q All right. Could you help me in terms of why you
11 were looking for it? What led you -- what led you to think
12 that there was going to be something there?

13 A Well, I knew we wanted to deal with the
14 shareholder question -- these member questions. So I was
15 looking for it in the first agreement. But I will say the
16 first agreement, I think I testified, had a lot of things
17 that just -- oftentimes when law firms draw up -- we would
18 not necessarily admit this to clients, but they come on
19 forms, and this document didn't seem to fit the deal, the
20 first one.

21 Q Well enough.

22 The point that I'm having difficulty understanding
23 is why it is that you would be looking for a provision that
24 was similar to the call provision that ended up on the
25 document.

1 A I thought we were going to have -- I wanted us to
2 have an agreement among the owners with regards to their
3 right to buy and sell. So I was looking for it.

4 And, yes, there is a right of first refusal in the
5 first one. Yes, you're right. But remember I said that
6 document didn't fit this deal, so we had to get down to the
7 second document, and I think we're only a couple of days
8 apart or a few days.

9 Q Are you saying that the right of refusal covered
10 part of --

11 A Well, it does --

12 A -- an exit strategy, but only art?

13 A No. The right of first refusal doesn't really
14 cover an exit strategy.

15 Q I'm just trying to see was there anything --

16 A If anything, it makes it more difficult to exit
17 because in order to do so you have to always be aware that
18 you have to offer it to somebody else and that makes
19 potential purchasers really a lot less interested.

20 Q If I understand you correctly though, you had
21 anticipated that there would be a provision in that
22 identical to the one that you received in late March of
23 1994, at least similar to it, in terms of a mechanism for
24 Mr. Hicks to transfer his interest to the Dille children.

25 A Yes.

1 Q And my question is, why would you -- why were you
2 expecting something along those lines?

3 A Well, I was expecting that there would be some
4 provision for the rights of both the Dille children and
5 Hicks to buy and sell their interest, besides the right of
6 first refusal.

7 Q And you didn't --

8 A I wanted -- I wanted it to be there.

9 Q Had you communicated that desire to anyone
10 beforehand?

11 A Before?

12 Q Before March of 1994 that you --

13 A Yes.

14 Q To whom had you communicated such and when did you
15 do so?

16 A Well, I think we went through in my notes I was
17 raising it to Dave Hicks all along, and I think I raised it
18 the very first time we met with John Dille.

19 Q Well, I guess that's what puzzles me because if
20 this is something that you had raised and it's consistent
21 with what Mr. Dille wanted, why is it that we didn't have an
22 understanding?

23 MR. WERNER: Objection; ambiguous, Your Honor.
24 I'm not sure what that Mr. Brown has testified he raised is
25 exactly what Mr. Dille testified he wanted.

1 JUDGE CHACHKIN: Overruled.

2 THE WITNESS: Well, I think I testified that it's
3 not uncommon for people entering into a business venture not
4 to want to focus on the ownership transfer restrictions
5 until later on. And I would think in order to have an
6 understanding you have to have an understanding, and I
7 didn't see any understanding, a meeting of the minds.

8 BY MR. SHOOK:

9 Q Now, is that true only because the option had not
10 been reduced to writing?

11 A There was no -- there was no terms and conditions.
12 There was nothing there. It was just a "hope for" concept.

13 Q Wasn't it understood from the beginning that Mr.
14 Hicks was going to be involved in WRBR only so long as the
15 Dille children wanted him there?

16 A Well, no, I think there was a lot more to it than
17 that, so no.

18 MR. SHOOK: No further questions, Your Honor.

19 JUDGE CHACHKIN: Any redirect?

20 MR. WERNER: No, Your Honor.

21 JUDGE CHACHKIN: You're excused. Thank you, Mr.

22 Brown.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 JUDGE CHACHKIN: We'll be in recess until 9:00

1 tomorrow morning.

2 (Whereupon, at 4:00 p.m., the hearing was
3 recessed, to resume at 9:00 a.m., on Thursday, November 5,
4 1998.)

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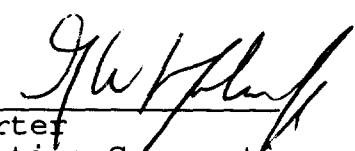
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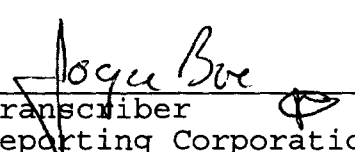
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